

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5891 of 1997

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NEHABEN NARENDRASINH SOLANKI

Versus

PRINCIPAL

Appearance:

MR AD OZA for Petitioner

MR HJ NANAVATI for Respondent No. 2

MR ND GOHEL, AGP for Respondent No.3

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 05/09/97

ORAL JUDGEMENT

Rule returnable today. Learned advocate Mr. Nanavati appears and waives service of Rule on behalf of respondents Nos. 1 and 2. Learned AGP Mr. Gohel appears and waives service on behalf of respondent No.3.

Under order dated 5th October, 1995 made by the respondent No.3, petitioner herein was declared surplus,

who was serving as a Clerk under respondents Nos. 1 and 2. The respondent No.3 further held that in view of the Government Resolutions dated 21st May, 1994 and 21st December, 1994, the petitioner was not entitled to protection of a surplus employee. Feeling aggrieved, the petitioner preferred Application No. 513/95 before the learned Gujarat Secondary Education Tribunal. Under order dated 10th October, 1995, the learned Tribunal entertained the application and made an ad-interim order restraining the respondent No.3 herein from implementing the impugned order dated 5th October, 1995. The said application was heard on 25th March, 1996. The learned Tribunal allowed the application and declared that the petitioner was entitled to the protection of a surplus employee. In view of the said judgment, I am informed, the petitioner has been given protection of a surplus employee and has been absorbed in another school. The respondent No.3, however, in the month of April, 1997 preferred a Review Application No. 102/97 before the learned Tribunal and alleged collusion between the petitioner and the respondents Nos. 1 and 2 herein. The said application was heard on 29th July, 1997. The learned Tribunal allowed the application and recalled its order made on 25th March, 1995 and Application No. 513/95 was restored to file. However, while doing so, the learned Tribunal also vacated the ad-interim order made on 10th October, 1995. Feeling aggrieved, the petitioner has preferred this petition.

2. Learned advocate Mr. Oza has submitted that in Application No. 102/97, the respondent No.3 has not prayed for vacation of the order dated 10th October, 1995, nor there was any move or any application for vacation of the said order dated 10th October, 1995. In that view of the matter, while restoring the application No. 513/95 on the file of the Tribunal, the learned Tribunal ought not to have vacated the order dated 10th October, 1995 without affording an opportunity of hearing to the petitioner. The petitioner appears to be right. Learned AGP Mr. Gohel also concedes that no application for vacation of the interim order dated 10th October, 1995 was made before the Tribunal. In that view of the matter, this petition is allowed. The impugned order dated 29th July, 1997 made on Review Application No. 102/97 in so far as it vacates the interim order made on Application No. 513/95 is quashed and set aside. It is, however, clarified that the respondent No.3 herein may move an application for vacation of the interim order, if so desired. Rule is made absolute accordingly. There shall be no order as to costs.

JOSHI